BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB EX PARTE NO. 575

REVIEW OF RAIL ACCESS AND COMPETITION ISSUES

REPLY OF THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION TO RENEWED PETITION OF THE WESTERN COAL TRAFFIC LEAGUE FOR RULEMAKING TO ELIMINATE UNREASONABLE "PAPER BARRIERS" TO INTERCHANGE

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The American Short Line and Regional Railroad Association (ASLRRA) submits this Reply in response to the Renewed Petition of the Western Coal Traffic League For Rulemaking to Eliminate Unreasonable "Paper Barriers" To Interchange filed on March 21, 2005. ASLRRA represents approximately 425 class II and class III railroads, most of whom are affected in a variety of ways by paper barriers. In addition, the ASLRRA is a party to the amended Railroad Industry Agreement (RIA), which has guided its members in the interpretation and resolution of multiple railroad interchange issues for the past six years. The collective experience of numerous and diverse member railroads informs the observations about paper barriers which ASLRRA offers here.

Fundamentally, the six year history of the Railroad Industry Agreement supports the conclusion that the RIA has been an effective private sector framework for the reasonable interpretation and use of paper barriers. Since its inception Class III railroads have informally and widely worked with their Class I connecting carriers when paper barriers have been contentious to the extent that with rare exceptions disputes have been resolved amicably without resorting to the STB for relief. During this period the Railroad Industry Working Group has been created in part to facilitate paper barrier interpretation and dispute resolution. Concurrently, the STB has monitored and observed the functioning of the Railroad Industry Agreement, and symbolic of the Board's interest in it, in September of 2004 the Amendment to the RIA was signed in the STB Conference Room in the presence of the Commissioners. During the multi-year existence of the RIA, nothing has occurred which has caused this watchful Board to intervene. ASLRRA believes that there is no reason now for the STB to trump the private sector and initiate rulemaking. In this regard ASLRRA supports the Reply to the Renewed Petition filed by the AAR.

Underlying the current Renewed Petition and in part the Railroad Industry Agreement itself is the reasonableness of paper barriers. The very reference to paper barriers in the RIA is witness to the reality that their role can generate conflicting opinions, even within the rail industry. Nevertheless, in assessing the broad experience of its members ASLRRA concludes that without the boundaries and predictability that paper barriers create for divesting class I carriers, a large number of its members would never have been created in the first place. Class I railroads spin off light density lines on their systems because they can be superior economic alternatives to abandonments. However, they are less likely to choose to sell or lease the lines if it means handing over existing customers to competitors. ASLRRA agrees with characterization in the supporting affidavit to the Renewed Petition by Professor Dempsey that in this way the acquiring railroads are in effect akin to subcontractors to the divesting carriers.

The RIA and its Amendment create definitions, boundaries and statements of principle to assure that acquiring short lines are not precluded from harnessing their entrepreneurial instincts to handle new business with any connections available to them, but fundamentally short lines accept contractual restrictions on existing class I business because there is no other realistic way to incent the divesting carrier to sell or lease them a line in a structure that is economically viable for the acquiring line. Professor Dempsey acknowledges the economic value existing business on light density lines represents to the divesting carrier, but his proposal simply to structure in the value of that existing business as a front end premium on the lease or sales price for the line is unrealistic. Many class II and class III railroad companies are viable solely because of their lower cost structures. Often they are marginally capitalized or worse, and in only a few instances have ready access to Wall Street capital markets. Even in the unlikely event that the divesting class I railroads opt to sell or lease light density lines without the assurance of paper barriers, front loading additional costs to replace their value will necessarily eliminate the ability of many smaller railroad operators to finance the acquisition of the lines at all. ASLRRA asserts that in that environment, deals will not get done, and abandonments of otherwise-viable parts of the national rail infrastructure will again be lost to abandonment.

ASLRRA believes that the private sector can work best work through issues presented by paper barriers to achieve a commercial balance that maximizes the utilization of the light density components of the national rail infrastructure and that the experience of the last five years under the Railroad Industry Agreement supports that conclusion. ASLRRA urges the STB to use its existing oversight powers to monitor that balance and to refrain from additional rulemaking.

Respectfully Submitted,

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Dated: May 2, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 2005, I served copies of the foregoing REPLY OF THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION TO RENEWED PETITION OF THE WESTERN COAL TRAFFIC LEAGUE FOR RULEMAKING TO ELIMINATE UNREASONABLE "PAPER BARRIERS" TO INTERCHANGE upon all parties of record in this proceeding by first class United States mail, postage prepaid.

Keith T. Borman

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